

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DEBRA RAYMOND,

: Plaintiff,

MEMORANDUM DECISION
AND ORDER

: -against-

ANDREW M. SAUL, *Commissioner of the Social Security Administration*,¹

: Defendant.

16 Civ. 3577 (GBD) (BCM)

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GEORGE B. DANIELS, United States District Judge:

On May 13, 2016, Plaintiff Debra Raymond commenced this action against Defendant Carolyn W. Colvin, Acting Commissioner of Social Security, pursuant to Section 205(g) of the Social Security Act, 42 U.S.C. § 405(g), seeking review of an administrative law judge's decision denying Plaintiff disability insurance benefits. (Civil Compl., ECF No. 1.) On September 22, 2017, this Court issued a Memorandum Decision and Order, directing that the case be remanded to the Commissioner for further administrative proceedings. (Mem. Decision and Order, ECF No. 21.) On December 20, 2017, a Stipulation and Order was entered that the Commissioner will pay Plaintiff \$6,150 in attorneys' fees and expenses, in full satisfaction of any and all claims made under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412. (Stip. and Order dated December 20, 2017, ECF No. 23.) Sixteen months later, on April 24, 2019, the Social Security Administration ("SSA") issued a "Notice of Change in Benefits" awarding Plaintiff past-due benefits and indicating that the SSA was withholding \$22,505, representing 25% of past-due

¹ Andrew M. Saul is now the Commissioner of the Social Security Administration. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Saul is hereby substituted for former Acting Commissioner Carolyn W. Colvin as the defendant in this action.

benefits, for attorneys' fees. (Notice of Change in Benefits, ECF No. 25-1, at 7–10.) Plaintiff's counsel now moves for an award of attorneys' fees of \$22,505 pursuant 42 U.S.C. § 406(b). (Notice of Mot., ECF No. 24.)

Before this Court is Magistrate Judge Barbara C. Moses's December 16, 2019 Report and Recommendation (the "Report"), recommending that Plaintiff's counsel's motion for attorneys' fees be granted. (Report, ECF No. 28, at 3.) Magistrate Judge Moses advised the parties that, pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b), failure to file timely objections to the Report would constitute a waiver of those objections on appeal. (*Id.* at 4.) No objections have been filed.

A court "may accept, reject, or modify, in whole or in part, the findings or recommendations" set forth in a magistrate judge's report. 28 U.S.C. § 636(b)(1)(C). A magistrate judge's report to which no objections are made is reviewed for clear error. *See Edwards v. Fischer*, 414 F. Supp. 2d 342, 346–47 (S.D.N.Y. 2006) (citations omitted). Clear error is present when, "upon review of the entire record, [the court is] left with the definite and firm conviction that a mistake has been committed." *United States v. Snow*, 462 F.3d 55, 72 (2d Cir. 2006) (citation omitted).

Magistrate Judge Moses conducted a thorough and careful inquest and issued the Report recommending that this Court award attorneys' fees in the amount of \$22,505. (Report at 2–3.) Moreover, Magistrate Judge Moses correctly noted that Plaintiff's attorney must return to Plaintiff the amount counsel was previously paid under the EAJA, (*id.* at 3 (quoting *Gisbrecht v. Barnhart*,

535 U.S. 789 (2002))), which Plaintiff's counsel pledged to do, (Affirmation, ECF No. 25, ¶ 14).

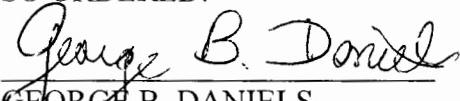
This Court has reviewed the Report, and finds no error, clear or otherwise.

Plaintiff's counsel's motion for attorneys' fees, (ECF No. 24), in the amount of \$22,505 is GRANTED. Upon receipt of this sum, counsel is directed to refund directly to Plaintiff \$6,150, representing fees previously awarded under the EAJA.

The Clerk of the Court is directed to close the motion accordingly.

Dated: New York, New York
December 16, 2020

SO ORDERED.


George B. Daniels
GEORGE B. DANIELS
United States District Judge